Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 2002

Juan Bautista Rivera/Petitioner

vs.

Donald P. Stephenson/Respondent

On Petition For A Writ of Certiorari
To the Supreme Court of the State California

Petition For Writ of Certiorari

Juan Bautista Rivera
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74PP

QUESTIONS PRESENTED

Whether the statement of this case show probable cause and/or conflicts with State and with the Governing principles of prior decisions of this Court in Ohralik, to entitle petitioner to the due process, and usual course of a State Bar issuance of notice to show cause and a trial on the merits, pursuant to the Rule of Procedure of the State Bar, Rule 212(a) and/or 425(a), to determine whether disciplinary sanctions should imposed upon the member or should the member be placed on involuntary enrollment and/or whether after filing petitioner's verified accusation against the attorney, he is entitle to an order pursuant to §§ 6108-6109 of the Business and Professions Code.

Whether the accused Donald Stephenson and his firm, were required under Rules of Professional Conduct, Rule 3-310. (A), (1), (2), (3), and (B), (1), (2), (a) and (b), (3), (4) and/or Rule 5-102(B), to disclose to their client Mangold, the possibility of conflicting interest, and their personal relationship, passions and interest with the Greene's, Mangold's neighbors and/or caretakers, for the retention and representations of Mangold's interest, and the possibility of any foreseeable adverse consequences to the client, and whether the accused and his firm needed Mangold's written consent under these rules, for retention of Mangold's employment.

Whether, Juan Bautista, preliminary information within his employment inquiry to his prospective lawyer and accused Donald P. Stephenson is protected under due process elements of confidential information and/or the elements of attorney and client fidelity relationship.

Whether the accused, Donald P. Stephenson, after having obtained Juan Bautista, private, and/or confidential information material to his employment inquiry, is required to obtain Juan's written consent under California Rules of Professional Conduct, Rule 3-310(E), for the accused to overreach, solicit and accept the Greene's employment adversary to his prospective client Juan Bautista.

Whether the accused breach his Rules of Professional Conduct, Rule 1-400(A), (B), (1), (2), (a) and (C) when he upon the confidential information obtained from his prospective client Juan Bautista, does within his passions and interest with the Greene's, overreach and used his client confidential information to solicit and encourage the Greene's to the commence Mangold's estate administration. Whether, the statement of this case and the evidence (Appendix E), discloses respondent witnesses, suppression of their knowledge of the arrangements and agreements between Mangold and Juan Bautista, and the witnesses suppressions of these facts, with knowledge of its falsity.

LIST OF PARTIES

Juan Bautista Rivera is the Complainant, Petitioner.

Donald P. Stephenson is the Accused, Respondent.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OFFICIAL AND UNOFFICIAL REPORTS

Opinion below, there are no citations to any reports by the State Bar and/or the State Supreme Court, with their Opinions. Their Opinions appear at: (Appendix A and B).

JURISDICTION

Petitioner, on May 29th 2001, filed a complaint with the State Bar of California. On December 11, 2001 the State Bar closed the matter. (Appendix A).

Petitioner on January 2, 2002, filed a petition for review and an accusatory complaint against attorney, Donald P. Stephenson. In re Accusation of Juan Bautista Rivera Against an Attorney was denied on June 19, 2002. A copy of the Opinion appears, thereto at (Appendix B).

The Statutory Provision Conferred to this Court jurisdiction is 28 U.S.C. 2101(c).

Rules Involved

The United States Constitutional provisions involved, are here under verbatim, and the State of California rules and statues involved are hereunder Cited, and set forth verbatim at: (Appendix C, p 1 trough 12).

U.S. Constitution Article I, Section 8, Clause 3.

Powers of Congress to regulate commerce.

To regulate commerce with foreign nations, and among the several states, and with the Indians tribes.

U. S. Constitution Amendment 1.

Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition to Government for a redress of grievances.

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Statement of the Case

Petitioner May 29th 01, complaint with the State Bar alleges that Donald P. Stephenson attorney at law, upon private and confidential information obtained from Juan Bautista employment inquiry, does within his conspiracy, passions and interest with the Greene's, overreached the Greene's and entered in a business solicitation, and that he thereto entered in a business interference, and fraud affecting Juan Bautista and Mangold's interest. On December 11, 2001 the State Bar closed the matter. (Appendix A). On January 2, 2001, Juan Bautista, petition for review and thereto filed his accusatory pleading with the California Supreme Court, alleging that Stephenson, and his friends Norval, Lillian and Justin Greene, and each of them, since (1982) oppressively/suppressive represented Mangold's interest;

and that at various times thereafter, met, joined together, planed and conspired to frustrate the transfer and conceal assets of Mangold; that thereby relied upon their conspiracy for the informal conservator-ship, and/or informal care of Mangold, and that as a proximate result of the accused willful acts, Mangold suffered neglect, abandonment, and fiduciary abuses. (Welfare & Institution Code §§ 15610. 05, 15610.07, 15610.30, 15610.57).

That on or about July 25th trough 28th 1995, Donald P. Stephenson in frustration of his conspiracy, solicited his friends' the Greene's and in breach of his duties owed to Juan Bautista communicated among them self, Juan's private and confidential information; that thereafter July 25th 1995, respondent attorney and accused, Donald P. Stephenson oppressively/suppressive accepted employment adverse to Juan Bautista; that as a proximate result of the wrongful acts herein alleged Juan Bautista has been generally damaged; that in doing the thins herein alleged Donald P. Stephenson acted in a willful and with the intent to unjustly enrich the Greene's from Mangold's estate, and to cause damages and injury's to Juan Bautista. (State Bar Rules of Proc. Rule 51(a), (b); Rules of Court, Rule 952(d); Bus. and Prof. Code 6108, 6109).

FIRST: Petitioner upon information and believes from the evidence alleged, that since on or about (1982), Mangold

neighbors, and/or caretakers, the Greene's[1] cared for Mangold affairs, thereto sought their friend (Donald P. Stephenson), and within that influence over Mangold, the law firm of Dobbins, Weir, Thompson & Stephenson, had Norval Greene served, Mangold's summons and complaint upon Mangold's successors, there they claimed accounting and recovery of money against Henrietta Mangold, the action terminated by default. (Petitioner's Accusation Against Attorney Donald P. Stephenson, Appendixes, and Exhibits 8, 10-11).[2] Nevertheless, trough that influence and managements of Mangold affairs, the Greene's and the law firm of Dobbins, Weir, Thompson & Stephenson, does obtained Mangold to dispose of his property by will. (Acc. Exh. 12-13).

SECOND: [W]here, as for the does of Donald P. Stephenson and the Greene's, the law firm of Dobbins,

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[1] Mangold was hosipitalized in (1983) for a percardiectory and left lobectomy, and in 1984 for a prostate operation, in 1985, he had a cerebrovascular accident. Since then he lived alone and is cared by the neighbor, Accordingly he frequently forgetful not ambulate that well. The patient is not able to care for himself. Ronald B. Rusford MD. County Records.

[2] Herein after, (Acc. Exh. 3 trough 19).

Weir, Thompson & Stephenson, so suppressive managed to use their skill in planning Mangold's estate, and does trough their willful and wantonly acts of their motives, interest, passions with the Greene's, relied upon the Greene's for Mangold's informal conservator-ship and care, and thus does proximate caused the following:

THIRD: [W]here as the proximate causes of their influence, and suppressive managements of Mangolds estate planning and affairs, caused Mangold to live in a housing substandard conditions, [3] and thereto Mangold suffered neglect in the provisions of food, clothing, proper shelter, neglected hygiene, physical and mental health needs, financial hardship, abandonment, and there lived in an environmental of health and safety hazards, and that unbearable to these abuses and "substandard conditions and further and unable to further provide for him self," sought the sale of his real property too move to Vacaville, and facilitate his errands and needs. (Acc. Exh. 3-7, 14, 15, 16, 19; 7A CJS, Attorney's. & Client § 252, p. 456-457).

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[3] Substandard conditions, is defined in Heath and Safety Code § 17920.3. (a), (1), (2), (3), (6), (8), (11), (12), (13), (14), (15); (b), (1), (2), (3), (4); (g), (1), (2), (3), (4); (h); (j); (k); (m); (o); Elder, neglect, abandonment, fiduciary abuse are, defined under Welfare and Institution Code Commencing with Article 2, § 15610, et Seq).

[W]herefore, the aforementioned respondent's does, and upon the information of Mangold's property been for sale and received by Juan Bautista, caused Juan Bautista, in February 1994, to see the were about of the property, then he met Mangold, and inquire about the sale of his property, which in deed Mangold, sought to sale. Nevertheless, do to the Greene's does of their neglect's, abandonment, Mangold requested, Juan Bautista immediate financial and transportation assistance for his errands and nutritional needs. (Acc. Exh. 17-18).

On that day of February 1994, Mangold's request petitioner to return and to provide further assistance, and to thereafter negotiate the terms of the real property agreement, there it was found that the house was also, with in many violations of the heath and safety, as defined under the Welfare and Institution Code, and the Health and Safety Code; that the house was neglected in deplorable condition, infested with vermin, layered with garbage, heated only by a wooden stove, and lacked pluming, proper place to sleep, and other facilities. (Appendixes E, p. 1; D, p. 2-3).

Thus, upon Mangold's requests and arrangements then made by Juan Bautista in reliance of Mangold sale his property to Juan Bautista, on or about June 1994, Mangold asked petitioner to bring him to the Greene's residence,

were Mangold conceded the assent of our agreements and arrangements and thereto requested the Greene's to release his papers, held in their trust.

That, the Greene's within violation of the statutes herein cited, and within their scienter, constructive fraud, and intent to fraudulently administer Mangold's estate, adversely, oppressive and/or suppressive withheld Mangold's requested document. Welfare and Institution Code, Commencing with Article 2, §§ 15610.05, 15610.07, 15610.30(a), (b)(1), (c), (c), (1), 15610.57.)

Moreover, with in the assent, of the parties agreements, services and benefits then provided by Juan Bautista, on or about October 18 1994, Mangold sought Adult Protective Service, Richard Tracy, and in presence of Tracy, Mangold "again" sought his neighbors and/or former caretakers the Greene's to release his paper, title and documents held in their pocessions.[4] (APS, Deposition, 44-45, Appendix E, p

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[4] Thus at trial Richard Tracy, with in his actual knowledge of the event of October 18, 1994, and within his hostility and within his scienter, and intent to defraud, Juan Bautista, of his contractual relations with Mangold, and in retaliation for Juan Bautista, July 5th, and 18th 1995, charges of his and Jordan criminal negligence with Mangold, uttered the process by his, suppression of any knowledge of Juan Bautista arrangements and agreements with Mangold. (App. D, p. 5-7, 9).

2-5). That, the Greene's within their does, adversary actions, scienter, constructive frauds, and fraudulent intent administer Mangold's estate to [t]heir unjustly enrichment's, "again" oppressively, suppressed and withheld Mangold requested papers and documents. Thus, Richard Tracy failed to follow up with his "statutory authority," and assist Mangold in obtaining his papers and document, from the Greene's. (Welfare and Institution Code, Commencing with Article 2, Sections, 15610.10).

FORTH: Nevertheless, on or about December 1994, the parties reached their final negotiations, and orally entered in their final arrangements for the transfer of the property, that petitioner owed Ernest, 45,000.00 to be paid from the sale of his real property in Tehama County, and therewith made the arrangements of Mangold housing, for Mangold, too live, his remaining day's there, under petitioner continued assistance, and free of rental charges. [5] (App. D, p. 4, p. 7).

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[5] Was plaintiff, there with entitling to quantum meruits, and/or relief under the doctrine of unjust enrichment, when he performed these services, in reliance of their agreement, and in reliance to recover for his services and expenditures in the future sale of the property at issue. (Appendix E, p. 9, 10).

That Juan Buatista, sought the sale of his and his common wife, property in Tehama County, to which, he had a prospective buyer.

[W]herefore, Mangold asked Juan Bautista to bring him to the Greene's, were Mrs. Greene, then within [t]heir constructive frauds against Mangold, and in [t]he interference of the parties business, evasively withheld and suppressed to assist Mangold, and declined comments.

Nevertheless, Juan Bautista been back and forth in negotiations with the prospective buyer of his property in Tehama County, on or about May of 95, sough his common wife accountant to verify Juan Bautista search under (IRS 1032) exchange, in order to improve Mangold living conditions; Cherwing-Jordan then implied that Juan Bautista was committing a fraud upon Mangold, there Juan Bautista "stormed" at the County Nurse Jordan, for her implications of fraud and their negligence, her failure to assist Mangold to the Hospital, and care for his infected injuries, which Juan Bautista attended Mangold to be treaded by North Bay Hosp. (Appendix D, p. 4, 5-6).

FIFTH: [W]here, for the related damages, oppressions and/or suppressions, slander's, interferences, and upon the conflicting facts, hostility and circumstances then present, on or about July 5th 1995, Juan Bautista, complained of the social worker, (Tracy) and the county nurse, (Jordan),

negligence with Mangold, and thereto sought the "State" Health and Welfare Department for Mangold's assistance, that on or about July 11, (1995) the State provided [t]he requested assistance trough, Solano County Adult Protective Services, Richard Tracy. (Appendix E, p. 4-5).

SIXTH: Nevertheless, Mangold rejected that assistance and conceded to Richard Tracy, (APS), that he will be relying upon Juan Bautista for his continuing care; Thus, as petitioner provided Mangold's dinner on July 11, 1995, Mangold conferred with Juan Bautista, and orally promising to devise by will his property upon petitioner.

SEVENTH: That, although petitioner in reliance of their oral agreements, and therewith equities, provided and assisted Mangold in his care and management of his property and accounts, among other services, he acknowledges too believe, that the accused and the Greene's, conspiracy and reliance's, scienter, constructive frauds, neglect, and abandonment, and their adverse actions and suppressive estate planning, intent's and conspiracy to unjustly enrich form Mangold's estate, and within their oppressive/suppressions and wanton disregard of his elderly client right's and privileges, and the Greene's and their witnesses stress full interference with Mangold's business, proximate caused multiple physical and mental injuries too Mangold, his hospitalized on or about July 18, 1995, and therewith his a proximate related death as of about July 24th 1995.

EIGHTH: [W]here as on or about, the 24th day of July of 1995, Juan Bautista been, Mangold's manager and provider, and therewith in Mangold, and Juan Bautista's oral contracts and agreements and relationship, Juan Bautista searched the yellow pages for an attorney, and "unaware of [t]his accused State Bar member Donald P. Stephenson, (1982) and thereafter aforementioned does, and passions and interest with Mangold's neighbors and/or former caretakers the Greene's," Juan Bautista telephoned, reached, and communicated to his prospective attorney Donald P Stephenson, his information material to his employment inquiry, aforementioned "encounters" with Mangold, Mangold's request and reliance upon Juan Bautista assistance in the management of his property and accounts, the parties property agreements as to December 1994, and Mangold July 11, 1995, promise to devise his property upon petitioner by will, and Mangold's death as of July 24th 1995. (7A CJS Attorney and Client, § 234, p. 423, 427).

NINTH: That the accused, within his does, and adverse motives, passion and interest with the Greene's, declined petitioner employment inquiry, and despite of his actual knowledge of the Greene's, does and their constructive frauds, oppressive/suppressive, neglect and abandonment and fiduciary abuses of Mangold, and despite the confidential information obtained from his prospective client, Juan Bautista employment inquiry, the accused

(Donald P. Stephenson), does overreached and "informed the Greene's of Mangold's death and there corruptively and fraudulently "solicited" encouraged them too proceed too Mangold's estate administration" thereto in breach of his duties to Juan Bautista, and adversely to Juan Bautista and Mangold, the accused obtained the Greene's employment and filed for administration of Mangold's estate, on about July 28th 1995". [6] Nevertheless, these actions by the accused Donald P. Stephenson, does deny Juan's his due process right's and protection and that, a clear violation and breach his duties as an attorney and client. Rules of Professional Conduct, Rule 3-310. (A), (1), (2), (3), and (B), (1), (2), (a) and (b), (3), (4), (E); Rule 1-400. (A), (B), (1), (2), (a), and (C); Ohralik v. Ohio State Bar Association (1978) 436 U.S. 445, 98 S. Ct. 1912, 56 L. Ed. 2d. 444; Business and Professions Code §6007(c)(1) trough (c)(3); § 6068 (a), (c), (d), (e), (g), (h); 7A CJS, Attorney's. & Client §§ 234, p. 423, 427; §§ 251, p. 455-456; Evidence Code Section 952).

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[6] Thereto, to the accused does of fraud's the Court finds, Mangold dies on July 24, 1995, Greene initiated probate proceedings (N0. P305057) with in days thereafter and was appointed executor of Mangold's will with full authority to administer the estate. (See, Estate of Mangold (Mar. 7, 1996) A071337 [nonpub.Opn]. Appendix, D, p. 1-2).

TENTH: That the accused, to further his conspiracy, adversary motives, suppressions, frauds, and corruptive passionate interest, too unjust enrich the Greene's from his former client Mangold, and Juan Bautista, suppressed Juan Bautista of his due process right to be serve with their actions against him as his prospective client, and that too suppress Juan Bautista off his relationship with Mangold, and of his property rights and claims, on or about July 28th 1995, Donald P. Stephenson, telephoned his former prospective client Juan Bautista, and demanded upon him to release all documents held in his business relations with Mangold. (Appendix C, IV, p. 10-11).

Moreover, nor did the accused of frauds, provided notice of administration to other creditors, as NorthBay Hospital and/or the Director of Health Services.

ELEVENTH: Thus, as (Donald P. Stephenson) informed Juan Bautista of his solicitations, encouragement and adversely acceptance of the Greene's employment to proceed therewith (1985) and thereafter, frauds against his former client Mangold and against his former and prospective client Juan Bautista, Juan Bautista sought the Greene's, at their residence for his property rights, [t]here Justin Greene's then declined Juan Bautista, property inquest and issues, stating that he had not time for.

Nevertheless, as Juan Bautista drove to the property at issue, Mangold's residence, Justin appeared there, Juan Bautista, in presence of Michelle, brought Justin to where, they had planted their trees and to where he had storage his equipment, and provide Justin with the aforementioned agreements.

That, Justin, asked myself to remove my equipments and animals and thins. (Appendix D, p. 7-8).

[W]herefore, on August 16, (1995), pursuant to section 48 of the Probate Code, Juan Bautista sought relieve from the court. (Solano County Superior Court # P35057).

THELVETH: That, the probate Court dismissed petitioner causes of actions. Nevertheless the Court of Appeals in affirming the judgment below provided that petitioner was entitled to file a creditors claim and/or a petition to establish title. (Mangold (Mar. 7, 1996) A071337 [nonpub.Opn]; Appendix D, p. 2).

Juan Bautista filed a complaint on the rejected portion of the complaint, and his petition to establish title to the real property at issue. (P035057 and L008677).

Nevertheless, Donald P. Stephenson, within his oppressive/suppressed, motive, conspiracy passions and interest with the Greene's, and despite of the confidential

information that he received from his prospective client Juan Bautista, and despite of his knowledge of the Greene's aforementioned, neglect's, abandonment and fiduciary abuses with Mangold, filed a vexatious cross-complaint against his former and prospective client Juan Bautista, alleging undue influence and fraud. (Rules, of Professional Conduct, Rule 5-200(A), (B); Rule 5-220; Jeffry v. Pounds (1977) 67 Cal. App. 3d. 6, 10-11; Cinema 5 LTD v. Cinerama, Inc. (1976 528 F. 2d. 1384-1386, and Statutes Involved).

At trial, the accused as corollary of his does, conspiracy and fraudulent intent's to unjustly enrich the Greene's, corruptively brought about their own "substandard conditions" of their neglect's, abandonment's and criminal abuses with Mangold, against Juan Bautista, to by his artifice statement of the facts, subject and utter upon the court that Juan Bautista was there to ingratiate. (Appendix D. p. 10). [7] (Acc. Exh. 3-7, 14, 15, 16, 19). (3); 7A CJS Attorney and Client § 251, p. 455-456). That petitioner's objected.[8]

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[7] Nevertheless, see, the facts of this case, Mangold's health and his dependability. (fn. 1).

[8] Juan Bautista, objection to respondent's artifice statement of facts, conjectures and surmise of the evidence was not clear. (RT. 79).

Nevertheless, the trial was build by respondent's hostility, animosity, utterances and retaliation, on or about January 1995, Juan, claimed upon Hanner, to fix up her property violations of Health and Safety Code, Section 17920.3. (14). This at trial, Hanner, does slander's Juan Bautista, within her interference with the parties business; Heeerde, Tracy, Jordan and Hanner, suppressed any knowing of Juan Bautista arrangements and/or purchasing Mangold's property, and that was not warranted by the information which they possessed, there they willfully uttered the process. (Appendix E, p. 1-5; D, p. 6, 9, 10).

[W]herefore the trial Court relied upon the accused, suppression of facts, their subjections of facts, his witnesses hostilities, surmises and conjectures, utterances and denied Juan Bautista all relief. The court declined to hear the accused cross-complaint for fraud and undue influence.

THERTEENTH: Thus, petitioner, appealed the trial Court decision, under the substantial evidence doctrine, respondent's artifice statements of facts, surmise, conjecture, hostilities, animosity's, and whether the record disclosed any unduly prejudicial matter in evidence against the appellant.

[W]herefore, the accused (Donald P. Stephenson) with actual knowledge of the aforementioned breach of his

duties to his former client Mangold, and with actual knowledge of the harm therewith caused to his former client Mangold, and to his prospective client Juan Bautista, fraudulently induced the court to relied upon his and the Greene's, fraudulently and adversary initiation of the probate proceedings within day's of Mangold's death.

[T]hereto, to the accused fraud's, the court finds, as previously discussed, the record supports a finding that appellant voluntary assisted, Mangold with out expectation of payment. Further the only reasonable alternative to inferring that his assistance was wholly altruistic is inferring that it was done exclusively to further his own interest in obtaining Mangold's property after Mangold's death, which does not entitle him to contribution from the estate. (Appendix D, p. 1-2, 10; 7A CJS Attorney and Client §§ 251, p. 455-456) [9]

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[9] Thus, presumably to court inferred that since the respondent's filed for administration of Ernest estate, with in day's of Mangold's death, this in July 28th, petitioner issues of the respondent's constructive fraud's, their oppressions and/or suppression of their duty's, their neglect's and abandonment's of Mangold during 1982 trough the time of Mangold's death July 24th 1995, were with out merits. (Appendix D, p. 1, 5-7).

That, been supportive of the accused of fraud's, and suppressive of their neglect's, abandonment and fiduciary abuses, Juan Bautista filed a petition for rehiring, and upon denial, he petition for review, and made a request to the court to take judicial notice. (No. S085728). The State Supreme Court denied, both issues. A petition for Writ of Certiorari No. 99-9995 was then filed, this court then issue an order to petitioner to comply with rule 14, thereafter the petition was denied.

FOURTHTEENTH: [W]herefore, petitioner with the year of exhausting of his appellate procedures, and pursuant to the Rule of Procedure of the State Bar, Rule 51(a), (b), on May 29th 2001, complained against his former and prospective attorney Donald P. Stephenson. On December, 11th 01, the State Bar closed the matter and, Juan Bautista, on January 2, 2002, petitioned the State Supreme Court for review of the State Bar actions, pursuant to California Rules of Court, Rule 952(d), and thereto filed a verified accusation against his prospective attorney (Donald P. Stephenson. [10] (Business and Professions Code, §§ 6108, 6109).

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10 S. Ct. of California, # S103277, Juan Bautista Rivera v. State Bar of California, Accusation Against Attorney Donald P. Stephenson, p 6, 7).

There, Juan's allegations consisted of conspiracy, frustration to unjustly enrich, concealment, negligence, neglect, abandonment and fiduciary abuse, solicitation, oppression,[11] and breach of attorney duties to his client and acceptance of employment adverse to Juan Bautista's interest, and general damages, Pp. 3-4, Juan Bautista thereon alleged that the last act in connection with the accusations occurred on or about January 16, 2001. (Rules of Procedure of the State Bar, Rule 51(a), (b)).

How Federal Question Was Raised and Passed Upon

Therefore, upon the aforementioned facts, and allegations thereto made in his accusation against attorney Donald P. Stephenson # S103277, dated Jan. 2, 2002, Juan Bautista, on the 15th day January, 2002, in his Supplemental Points and Authorities to his Accusations Against the Attorney, Donald P. Stephenson, Pp. 8, 10, 11, 13, brought about this Court, opinion of Ohralik v. Ohio State Bar Association (1978) 436 U.S. 445, 98 S. Ct. 1912, 56 L. Ed. 2d. 444, and Rules of Professional Conduct, Rule 1-400, which in pertinent part provides:

---

[11] Oppressive and suppressive are used with in the meaning of fraudulently withholding.

Rule 1-400(C), provides:

A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgement by the Constitution of the United States or the Constitution of the State of California. A solicitation to a former or present client in the discharge of a member's or law firm's professional duties is not prohibited

In, Oharalik, the Court held:

> (a) A lawyer's solicitation of business trough direct, in-person communication with the prospective client has long been viewed as inconsistent with the profession's ideal of the attorney-client relationship and as posing a significant potential harm to the prospective client. P. 454.
>
> (b) The State does not lose its powers to regulate commercial activity deemed harmful to the public because speech is a component of that activity. Pp. 455-456.

(c) A lawyer's procurement of remunerative employment is only marginally affected with First Amendment concerns. While entitled to some constitutional protection, appellant's conduct is subject to regulation in furtherance of important state interest. Pp. 457-459.

(d) In addition to its general interest in protecting consumers and regulating commercial transactions, that State bears a special responsibility for maintaining standards among members of the licensed professions, especially members of the State Bar. Protection of the public from those aspects of solicitation that involve fraud, undue influence, intimidation, overreaching, and other forms of "vexatious conduct" is a legitimate and important state interest. Pp. 460-462.

(e) Because the State's interest is in averting harm by prohibiting solicitation in circumstances where it is likely to occur, the absence of explicit proof or finding of harm or injury to the person solicited is immaterial. The application of the Disciplinary Rules to appellant, who solicited employment for pecuniary gain under circumstances likely to result in the adverse

consequences the State seeks to avert, does not offend the Constitution. Pp. 462-468.

48 Ohio St. 2d. 217, 357 N.E. 2d. 1097, affirmed.

Thus, the State Supreme Court, denied review and/or an order to the accused to appear and answer the accusatory pleading. The court did not made, any points of consideration of (Oharalik), and or to the Rules and Statutes Involved.

[T]herefore, this Court may review the judgments below on a writ of certiorari, to determine whether Juan Bautista, was denied his equal protection under the law, and thereto conflicts with this court opinion of (Oharalik), and the rules and statutes involved, and whether he is entitles to the due process, usual course of a State Bar issuance of notice to show cause and a trial on the merits, pursuant to the Rule of Procedure of the State Bar, Rule 212(a), 425(a), to determine whether disciplinary sanctions be imposed upon the member or should the member be placed on involuntary enrollment and/or whether after filing petitioner's verified accusation against the attorney, he is entitle to an order pursuant to § 6109 of the Business and Professions Code.

Reason For Granting Certiorari

Petitioner, is not appealing the decisions of the (First Appellate District Court, Division Five, Appendix D, Estate of Ernest M. Mangold # A0866190), he does bring that in to issue, as necessary to bring all the facts that support his allegations within the proceedings below in the State Bar and in the Supreme Court of California, and these appear necessary upon petitioner judgment for this court determination of whether the court should grand Certiorari, as to issuance of a notice to show cause to State Bar member and/or ordering the accused to appear and answer the accusatory pleadings. (Rules of Procedure of the State Bar, Rule 212, 425; Business and Professions Code § 6108, 6109).

I

In this matter, each of these factors, are supported by clear and convincing evidence in the records, that the mass tort positions taken by the accused since (1982) manifest largely a measure of the accused Donald P. Stephenson, scienter, intent to defraud, and conspiracy with the Greene's too their unjust enrichment's from Mangold's estate, were trough their reliance's and suppressions substantially harmed of the interest of his client and former client Mangold. (Business and Professions Code § 6007(c) trough (c)(3); 7A CJS Attorney and Client, § 255, p. 460, 461). That, the evidence shows, [t]he Greene's accumulated violation of the cited Health and Safety Code,

Section 17920.3; the evidence also shows Mangold's neglect and abandonment, while he detrimentally relayed upon the Greene's and Donald p. Stephenson, for his estate planning and managements of his affairs. (Welfare & Institution Code, Article 2, Section 15610. et Seq.).

The evidence also shows, Mangold's disabilities and inability to provide for him self, and that he sought the sale of his property, and as Juan Bautista and Mangold, encounter, Mangold request upon his prospective buyer Juan Bautista for his immediate assistances. (See, fn. 1; Appendix E).

Thus, Juan Bautista, relied upon their oral agreements, and improved Mangold's conditions and the property. The evidence also shows, that the Greene's within their scinters, constructive frauds, willfully, wantonly and in interference of the parties business, and Mangold's well been, sought to administer Mangold's estate, and thereto suppressed and withheld Mangold's papers and documents. Nevertheless, [t]hereto to Mangold's oral agreement's with petitioner as July 11, 1995, Mangold rejected the respondent's witness Richard Tracy from Adult Protective Service, and Jordan, Public Heath Nurse, assistance and relied upon Juan Bautista, for his continuing care and support. (Appendix E). Wherefore among all the aforementioned facts then present before Mangold as July 11th 1995, Mangold promise to devise his property upon petitioner by will.

Thus, from reviewing (foot note one) and (Appendix E), it is reasonable to conclude the Greene's had actual knowledge of Mangold's necessities and that, they willingly, wantonly and willfully suppressed to assist Mangold in his needs of care, moreover form that evidence, is reasonable to conclude that the Greene's had actual knowledge of Mangold sale of his property to petitioner.

Nevertheless, since the Greene's had abandoned their duties of care too Mangold, they "were not" aware of Mangold's well been, his hospitalization nor of his death, "but for the accused motive passions and interest with the Greene's, and the accused suppressive breach of his duties, and thus adversely too his former prospective client and Juan Bautista, does and overreach and solicit and corruptively encourage the Greene's too the administration of Mangold estate, as July 28th 1995." Moreover, the accused knowingly of the Greene's does [t]heir neglect and abandonment and their aforementioned constructive fraudulent abuses with Mangold, and with actual knowledge of Mangold's agreements with petitioner, and upon that information, and adversely to Juan Buatista the accused does accepted the Greene's employment, furthermore, to further his co-conspirators unjust enrichments, and that suppressive of his actual knowledge of his friends the Greene's, neglect's, abandonment, constructive frauds, business interferences and abuses with Mangold, vexatiously sue his prospective client Juan

Bautista. (Cinema 5 LTD. v. Cinerama, Inc. (1976) 538 F.2d. 1384, 1385, 1386; Rule of Professional Conduct, Rule, 5-220; Rule 5-200(A) and (B)).

Moreover, their witnesses also had actual knowledge, of the Greene's neglect, and abandonment and Mangold's sale of his property, the parties business, and contractual arrangements. This the respondents witnesses, county records and notes, and their deposition (Appendix E) does discloses Mangold's and his neighbors Heerde, knowledge of Mangold and Juan's purchase, arrangements and agreements. Nevertheless, respondent's witnesses, and his client's does with the intent to defraud, conceals, and suppresses these facts from the trial of facts, and denied any knowledge Juan Bautista, purchasing arrangements and agreements therewith made with Mangold. (Appendix E).

Originally the court took a "two-tier" approach to content-originated regulation of expression. Under the "definition balancing of this approach, some form of expression are protected by the First Amendment and certain categories of expression are not entitled to protection. This doctrine traces to Chaplinsky v. New Hampshire, in which the Court opined that certain well-defined and narrowly limited classes of speech . . . are no essential part of any expositions of ideas, and such slight social value as a step to truth" that movement may prevent those utterances and punish those uttering them without raising any

Constitutional problems. (Constitution of United States of America, 14152 Analysis & Interpretations (1992) ***Government Restrain of Content of Expression,*** Pp. 1127-1128).

Wherefore, these actions taken by the accused Donald P. Stephenson, not only conflicts the rules involved, Rule of Professional Conduct, his Business and Profession Code, but also breaches his former client last will and his prospective client right to confidentiality, and that under the authorities herein cited a willful and unlawful act, within it self, conflicting with prior decision of this court, and a flagrant repudiation of these standards, which this Court, and the State of California, have enunciated and concerning the principles applicable to petitioner's case. (Ohralik v. Ohio State Bar Ass. (1978) 436 U.S 445, 98 S. Ct. 1912, 56 L. Ed. 2d. 444, 457; Constitution of United States of America, 14152 Analysis & Interpretations (1992), ***commercial speech,*** Pp 1113, 1116; California Rules of Professional Conduct, Rule 3-310, California Rules of Professional Conduct, Rule 1-400; Business and Professions Code §§ 6007, 6068; It is the duty of an attorney to do all of the followings, section (a), (c), (d), (e) and (g), (h); Evidence Code § 952; 7A CJS Attorney and Client § 234, p. 423, 427; 7A CJS Attorney and Client § 251, p. 455, 456; Rules of Professional Conduct, Rule 5-200(A) and (B); Rule 5-220;Cinema 5 LTD. v. Cinerama, Inc. (1976) 528 F. 2d. 1384.

[T}here the federal Court declared that a lawyer who would sue his own client, asserting lack of substantial relationship between the litigation and the work he is performing for the client "is leaning on a slender reed indeed". (State Bar Formal Opinion 1996-146, p. 2 of 6).

II

Herein all of the issues which petitioner tendered to the State Bar and to the State Supreme Court for determination on the merits are issues "not plainly frivolous" and the accused adversary's solicitation and their frauds and conflicting interest, oppressive/suppressions of Mangold due process right's, in reliance upon his motives, passions and interest with the Greene's for the informal conservation and care of Mangold in their negligent and oppressive/suppressive estate planning, indeed caused substantial harms to the his former client Mangold, and further continue to cause substantial harm to Juan Bautista, his prospective client. . (Business and Professions Code § 6007(c) trough (c)(3); 7A CJS Attorney and Client, § 255, p. 460, 461).

So far as we can tell, these rules involved and legislative in-activities, and this Courts decision though quite at issue, have not yet place the member in any disciplinary sanction nor have he received notice to show cause and/or any order to appear and answer the accusations, nor have place the accused member in any recommended involuntary inactive

enrollments under the facts and law, presumably that is due, at least in part to the Constitution dubiety of such denial, and the accused contempt for the law which, as a sworn attorney he is bound to support. Nevertheless, it is the duty of an attorney to protect his client (Mangold) in planning his estate will and entitle that might affect the elderly. (1 Mezzullo & Woolpert, Advising the Elderly Client (1993) Section 3:1-3:11, 3:15, 3:17, & 3:19).

Thus, it is the duty of an attorney, to use care, skill and diligences as other members of the profession commonly posses and exercise, and as herein, is the oppressive breach of these duties that does connect between Juan Bautista resulting damages, and injuries and death of the former client Mangold. In these instances and doings the State Bar and the State Supreme Court have committed unsupportable error of far reaching dimensions for its denials.

The petition for writ of certiorari should be granted.

Dated: September 6, 2002.

Juan Bautista Rivera,
Petitioner, Per se.
1133 Beelard Drive
Vacaville, Cal. 95687-5543
Tel. 1-707-452-9728

APPENDIX A

THE STATE BAR OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL INTAKE

November 11, 2001

PERSONAL AND CONFIDENTIAL

Juan B. Rivera
1133 Beelard Drive
Vacaville, CA 93065

Inquiry No.: 01-8818
Respondent: Donald P. Stephenson

Dear Mr. Rivera:

Your complaint and all supplemental documents and/or information you provided in your LRS Referral letter have been reexamined as part of the internal review process of the Office of the Chief Trial Counsel. After carefully analyzing the facts, the law, that high standard of proof in the State Bar matters, and the likelihood of successful prosecution, I have determined that your matter will remain closed.

In order to seek review of this decision, you must file a verified accusation against the attorney with the California Supreme Court, pursuant to rule 952, subsection (d) trough (f), California Rules of Court, with in 60 days of the date of this letter.

The Clerk of the Supreme Court has instructed us to advice you that no specific form is used by the Supreme Court for filing of a verified accusation against an attorney. You may obtain specific information by contacting the Clerk's office in Los Angeles or in San Francisco. The addresses and phone numbers of the respective offices are listed below.

California Supreme Court
Clerk's Office
300 South Spring Street
Second Floor, Room 2752
Los Angeles, CA 90013
(213) 830 7570

California Supreme Court
Clerk's Office
350 McAllister Street
San Francisco CA 94102
(415) 865-7000

Please be aware that if you file a verified accusation against the attorney, the Office of the Chief Trial Counsel will only reopen its files in this matter if the California Supreme Court issues an order granting your request.

You may also which to consult legal counsel for advice regarding any other civil, criminal, or administrative remedies which may be available to you. You man contact you're local or county bar association to obtain the names of attorneys who might assist you further in this matter.

Very truly yours,
"S/Adriana Burger".
Deputy Chief Trial
AB/cj

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

En Banc

In re the Accusation of JUAN BAUTIASTA RIVERA
Against an Attorney

Petition DENIED.

SUPREME COURT
FILED
June 19 2002
Frederick K. Ohirich Clerk
Deputy

Kennard, J., was absent and did not participate.

"S/ George".
Chief Justice

APPENDIX C

Pertinent provision involved, of the rules and statues of the State of California are hereunder Cited, and set forth verbatim.

Rules of Procedure of the State Bar

Rule 51. Period of Limitations

(a) A disciplinary proceeding based solely on a complaint's allegations of a violation of the State Bar Act or Rules of Professional Conduct shall be initiated with in five years from the date of the alleged violation.

(b) For purpose of paragraph (a) of the rule, a violation of the State Bar Act of Professional Conduct is deemed to have been committed when every element of the alleged violation has occurred, except where the alleged violation is a continuing offense, in which case the violations is deemed to have been committed at the termination of the entire course of conduct.

Rules of Procedure of the State Bar

Rule 212 Notice of Trial

(a) Notice of the trial date shall be served upon the parties by the Clerk not less than thirty (30) days before the trial date, unless the parties agreed to shorter notice

Rule 425. Hearing on the Merits

(a) A hearing to determine whether the member should be placed on involuntary enrollment shall be held as

soon as practicable after the issuance of the notice to show cause. Due consideration shall be given to allowing time for the appointment of counsel, for preparation of the defense, and for the competition of such discovery and/or physical or mental examination as may be appropriate.

Rules of Professional Conduct

Rule 3-310. Avoiding the Representation of Adverse Interest

(A) For purpose of this rule:

(1) "Disclosure" means informing the client or former client of the relevant circumstances of the actual and reasonable foreseeable adverse consequence to the client or former client:

(2) "Informed written consent" means the client or former client written agreement to the representation following written disclosure.

(3) "Written" means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal business, financial, personal relationship with a party or witness in the same matter; or

(2) The member knows or reasonably should know that:

(a) the previously had a legal, business, Financial, professional or personal relationship with a party or wittiness in the same matter, and

(b) the previous relationship would substantially affect the member's representation: or

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the members knows or reasonably should know would be affected substantially by resolution of the matter, or

(4) The member has or had legal, business, financial, professional interest in the subject matter of the representation.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Rule 1-400. Advertising and Solicitations

(A) For purpose of this rule. "communication means any massage of offer made by or in behalf of a member concerning the availability of professional employment of a member or a law firm directed to any former, present, or prospective client, including but not limited to the following:

(B) For purpose of this rule, a "solicitation" means any communication:

(1) Concerning the availability for professional employment of a member or a law firm in which a significant is pecuniary gain; and

(2) Which is

(a) Delivered in person or by telephone

(C) A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgement by the Constitution of the United States or the Constitution of the State of California. A solicitation to a former or present client in the discharge of a member's or law firm's professional duties is not prohibited

Rule 5-102 Avoiding the Representation of Adverse Interest

(B) A member of the State Bar shall not represent conflicting interest, except with the written consent of all parties concerned.

Rule 5-200 Trial Conduct

In presenting a matter to a tribunal, a member:

(A) Shall not employ, for purpose of maintaining the cause confined to the member such means only as consistent with the truth;

(B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of facts or law;

Rule 5-220 Suppression of Evidence

A member shall not suppress any evidence that the member or member's client has legal obligation to reveal

Business and Professions Code

Section 6007. Involuntary treatment or confinement; involuntary, inactive enrollment; restoration to capacity; interim remedies

Section 6007. (c)(1) The board may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a substantial treat of harm to the interest of the attorney' s clients or the public or upon a finding based on all the available evidence, including affidavits, that the attorney has not complied with section 6002.1 and cannot be located after reasonable investigation

(2) In order to find that the attorney's conduct poses a substantial treat of harm to the interest of the attorney's clients or the public pursuant to this subdivision, each of the following factors shall be found, based on all the evidence available, including affidavits.

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) The attorney's client or the public are likely to suffer grater injury from the denial of involuntary inactive enrollment than the attorney is likely to suffer if is granted, or there is a reasonable likelihood that the harm will reoccur or continue. Where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

(C) There is reasonable probability that the State Bar will prevail on the merits of the underline discipline matter.

(3) In the case of an enrollment under this subdivision, the underlying matter shall proceed on an expedited basis.

§ 6068. Duties of Attorney

It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States.

(c) To counsel or maintain those actions, proceedings, or defense only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for purpose of maintaining the cause confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by and artifice or false statement of facts or law.

(e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets of his or her client.

(g) Not to encourage either the commencement or the continuance of an action or proceedings from any corruptive motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

Section 6108. Accusation; Writing and verification

If the proceedings are upon the information of another, the accusation shall be in writing and shall state the matter charged, and be verified by the oath of some person, to the effect that the charges therein contained are true.

The verification may be made upon information and belief when the accusation is presented by an organized bar association.

Section 6109. Order to appear and answer; Service of Copy; Time

Upon receiving the accusation, the court shall make an order requiring the accused to appear and answer it at a specific time, and shall cause a copy of the order and the accusation to be served upon the accused at least five days before the day appointed in the order.

California Rules of Court, Rule 952.

Review of State Bar Court Decisions

Rule 952(d) [Review of other decisions] A petition to the Supreme Court to review any other decision pf the State Bar Court or action of the Board of Governors of the State Bar, or any board or committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act, or the chief executive officer of the State Bar or the designee of the chief executive officer authorized to make a determination pursuant to article 10 of the State Bar Act or these rules of court, shall be filed within 60 days after written notice of the action complained of is mailed, postage prepaid, to the petitioner, addressed to the petitioner at his or her address pursuant to section 6002.1. With in 15 days after service of the petition, the State Bar may serve and file an answer and brief. With in five days after service of the answer, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar, with in 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after service of the brief, the petitioner may file a reply brief.

Evidence Code Section 952. Confidential communication between client and layer

As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her layer in the course of that

relationship and in confidence by means which, so far as the client is aware, discloses the information to no third persons other than those to whom are present to further the interest of the client in the consultation or those to whom disclosure is reasonable necessary for the transmission of the information or the accomplishment of the purpose for which the layer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of the relationship. A communication between a client and his or her layer is not deemed lacking in confidentiality solely because the communication is transmitted by facsimile, cellular telephone, to other electronic means between the client and his her lawyer.

APPENDIX D

NOT TO BE PUBLISHED ON OFFICIAL REORTS

IN THE COURT OF APPEALS
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Filed
Court of Appeal
First Appellate District
Dec. 20 1999
Ron D. Barrow, Clerk

Estate of ERNEST M. MANGOLD.
Deceased.

JUAN BAUTISTA RIVERA, A0866190

Petitioner and Appellant,

v.

Justin L. Greene, as Executor, etc. (Solano County Superior Court P.035057
Objector and Appellant,

JUAN BAUTISTA RIVERA, (Solano County Superior Court L008677)

Plaintiff and Appellant,

v.

JUSTIN L.GREENE, as Executor, etc.

Defendant and Respondent.

Appellant Juan Bautista Rivera, in propia persona, appeals a judgment by court trial denying his claims against the estate of decedent Ernest M. Mangold for personal services. He also appeals an order denying his petition to establish title to real property owned by the estate directing Justin L. Greene, the estate's executor, to transfer title. His principal contention appears to be that the trial court erroneously concluded there was insufficient evidence that he and Mangold had an oral agreement whereby Mangold would either sell or devise his real property to appellant, and that he was not entitle under the doctrine of quantum meruits to reimbursement for personal services he provided Mangold. We affirm.

BACKGROUND

Mangold dies on July 24, 1995, Greene initiated probate proceedings (N0. P305057) with in days thereafter and was appointed executor of Mangold's will with full

authority to administer the estate. (See, Estate of Mangold (Mar. 7, 1996) A071337 [nonpub.Opn].)

Appellant filed a creditors claim in the probate proceedings. In support thereof he state that he provided Mangold with home care services from February 1994 until Mangold's death. He claimed his 18 month of services worth 20 per hour, making their reasonable value $51,255.24.

Appellant also filed a petition in the probate proceeding to establish title to Mangold's real property, and for an order directing Greene to transfer title to him. (Prob. Code Section 9860, subd. (a)(3)). Broadly read, his petition claimed an interest in the property pursuant to an alleged December 1994 oral agreement with Mangold whereby appellant would purchase Mangold's property for $45,000, build a cottage for Mangold on the property, and care for him the remainder of his life; and to an alleged July 1995 oral agreement with Mangold whereby Mangold promised to devise the property to appellant by will in exchange for appellant's continued "comfort, care and consolation".1

After the Greene disallowed all but 5,000 of appellant creditor's claim appellant filed a complaint on the rejected portion of the claim (No.L008677, Prob. Code §§ 9353, 9354). He alleged he was entitled to quantum meruit for the 18 months of services he provided Mangold, and that the beneficiaries of Mangold's estate would be unduly benefit if his claims was not granted.

The petition to establish title and the complaint of the creditor's claim were consolidated for trial. The bulk of the testimony during the one day trial was from appellant.

---

1. From the time appellant filed the petition to establish title at leas trough trial, he was represented by counsel.

Appellant's Testimony

Appellant first met Mangold in February 1994 when he went to Maongold's house to inquire about its availability for sale. Mangold's house is in the rural area approximately five miles from downtown Vacaville. The house was in deplorable condition, infested

with vermin, layered with garbage, heated only by a wooden stove, and lacked pluming. Mangold did not respond directly to appellant inquiry. He told appellant he need help because he was hungry and had no transportation or telephone. Over the next few weeks appellant ran errands for Mangold because Mangold was barely ambulatory and was unable to perform these errands alone. He also voluntarily moved boxes of papers stacked alongside Mangold's wooden stove to avoid a fire hazard. He asked if he could clean the inside of the house to make Mangold more comfortable, and Mangold Agreed.

In the ensuing months they discussed the value of the Mangold's property, appellant's interest in purchasing it, and Mangold's interest in moving to another house.

Appellant looked for more suitable housing for Mangold, but found nothing Mangold could afford.

In December 1994 they had a "serious discussion" about the purchase. Mangold "asked [him] for $60,000.00 for the property." Appellant explained that such a sale price was insufficient low to enable Mangold to purchase any other house. He suggested giving Mangold $45.000 for the property ...[and] I will continue to provide for you, and I will build you ...a mother-in law home" in which Mangold could stay and which appellant would keep clean, so if Mangold got sick, appellant would be able stay with him overnight, if necessary. "And Mr. Mangold ...accepted my offer." The agreement also included continuing the personal services appellant was already performing. Mangold knew that appellant planned to obtain the $45,oo from the impending sale of property appellant owned in Corning (Tehama County), California. There was no written documentation of their agreement.

Appellant acknowledged on cross- examination that the Corning property was owned solely by Cathy Calfas, his 20-years common law wife, and the he never discussed with her his agreement to buy Mangold's property with the proceeds from the sale of the Corning property or that he was performing chores for Mangold as part of a purchase agreement.

The assistance appellant provided Mangold from February 1994 until his death in July 1995 included arranging for his meals and weekly showers at his house because Mangold's house had no shower, arranging medical appointments and social

security benefits, installing a toiled and propane stove, connecting the water, obtaining a telephone; collecting firewood; doing his laundry; taking him on weekly trips to the post office, grocery store and bank; and "anything that he asked me".

After December 1994 agreement appellant began cleaning the property around the house, using his own tractor to clear out debris like junk cars, and to mow weeds. The latter task was in response to hazard notice from the fire department. He also planted trees and installed chickens and geese.

Appellant did not keep a log of his daily activities or expenses on behalf of Mangold. Occasionally Mangold gave him five or ten dollars for gas when they were running errands in appellant's truck. The total amount of Mangold's donations was between 40 and $60.

Throughout his association with Mangold appellant was unemployed and receiving disability payments for earlier injuries. He stated repeatedly that he as not hired by Mangold as an employee to perform services fro him. They had "no employee relationship." Under they agreement appellant would perform errands and home care services as part of their business relationship to purchase Mangold's property. He had no expectation of monetary or employment benefits agreement with Mangold or his relatives. When Richard Tracy, a social worker with the

county's adult protective services, asked if he wanted to be employed as helper for Mangold, he declined. He explained to Tracy that he was not under employment: with Mangold, nor did he wanted to be so employed because of his disability.

Testimony of Neftaly Rivera, Appellant's Brother

In early 1995 appellant and his brother, Neftaly a general contractor, visited Mangold's house to discuss the best kind of structure to put on the property for Mangold. Their discussion included the oral agreement for appellant to buy the property, with Mangold living in the new structure until he died so Mangold would not have to move. The brother suggested a prefabricated building would be less costly than remodeling the existing house.

Testimony of Michelle Rivera, Appellant's Daughter

Michelle, then 14 or 15 year old, occasionally accompanied appellant to Mangold's house and helped bring food, clean up, and plant trees. She also did Mangold's laundry at their house. Her assistance was voluntary and out of her good citizen and "wanted to take care of Mr. Mangold the best that he could because he cared for him a lot. "Appellant never told her he had any legal or contractual obligation to Mangold.

Testimony of Cathy Calfas, Appellant's common Law Wife

Calfas occasionally accompanied appellant during his visits to Mangold. The main purpose of the visits was to bring food. She and appellant discussed their buying Mangold's property and build him a small house so he could remain on the property. She tough they may have discussed a specific agreement between appellant and Mangold for the purchase of the property, but could not remember the particulars. Hers was the only name on the Corning deed because only she was employed when the property was purchased. However, she considered it jointly-owned property, as appellant had provided the down payment with the proceeds of a worker's compensation settlement. She did not authorized appellant to sell her interest in Corning property.

Testimony of Catherine Cherwing-Jordan, Public Health Nurse

Jordan first visited Mangold in May, after the county was informed he was unable to care for himself and lived in a "terrible" house. Despite the squalor, Mangold wanted to stay at his house and she felt he was competent to make that decision. She met appellant in October 1994. He told her he was helping Mangold because he was interested in order people and felt no one was helping Mangold. Mangold told her he was inable to pay for the telephone and heater that appellant had paid to have

installed. Appellant told her he tough Mangold would repay him later when Mangold had the money. Manogold subsequently received public assistance. Jordan was unaware of the financial arrangement between Mangold and appellant. Mangold once told her appellant had help him "around the place" but he didn't' know what [appellant] wanted."

In May 1995 Mongold, in appellant presence, told Jordan that appellant charged

five dollars to take him to town, or ten dollars if appellant drove his big truck. Appellant became hungry when she appeared to infer he wanted to be paid for his services. When she raised the question of Mangold's future living arraignments, he and appellant discussed the possibility of exchanging their respective Vacaville and Corning properties, and appellant expressed his concerns that no one was doing anything for Mangold.

Jordan was unaware of any property agreement between appellant and Mangold. She considered appellant assistance to Mangold beneficial.

Testimony of Richard Tracy, Adult Protective Services Social Worker

Tracy had three contacts with Mangold between June 1994 and July 1995. At each meeting they discussed Mangold's housing. Mangold Never mentioned a property arrangement with appellant. Tracy once discussed with appellant the possibility of appellant been paid with public funds as a home-care provider. Appellant declined because he did not want to jeopardize his disability pension by receiving taxable income. Appellant never indicated he had a contractual obligation to help Mangold. Mangold told Tracy that appellant had helped him with errands and charged five or ten dollars to take him into town.

Testimony of Joy Louise Hanner, Neighbor

Hanner met appellant in March or April 1995 when she saw him working in Mangold front yard. Appellant told her he was interested in buying the property and was concerned that no one was looking after Mangold, so as a good citizen, he had decided to help him. Appellant did not mentioned a property purchase contract. He offered to pay her to clean Mangold's house, but she declined. Hanner was concerned that appellant was "out to take" Mangol's property, and warned Mangold to be careful and not to sing anything. Mangold reassured her that he had no plans signing anything.

Testimony of Mark Van Heerde, Tenant

Van Heerde leased property from Mangold to pasture his animals. He had several conversation with appellant, who never mentioned an expectation of payment for his services or purchasing Mangold's property. He described himself to Van Heerde as a Good Samaritan. Following Mangold's death appellant told him he would fight

Mangold's heirs "all the way trough probate" because they had abandoned him during his lifetime".

Testimony of Justin Greene

The Green family had a ranch near Mangold's property. Greene first met appellant on or about the day Mangold died, when appellant came to the Greene's house and said he wanted to buy Mangold's property. He did not mentioned any contractual arrangement between him and Mangold. Greene was in midst of moving his mother to a senior residence facility and arranged to meet appellant at Mangold's property an hour later.

At the meeting appellant expressed his concern about his chickens, trees and Mangold's mail. Green told him to take his chickens, because he did not want to be responsible for them, but he explained that, having recently been through a family death, he knew that everything in the estate would have to be accounted for. Appellant said. "Fine." The following day the chickens were gone and the trees dug up.

Appellant's Rebuttal

Appellant said he did not discuss the December 1994 agreement with Tracy, Van Heerde, Hanner or Jordan because it was "no other person's business" except his and Mangold's. When he and the Greene had their meeting at Mangold's property, he explained the December 1994 agreement to Greene.

The court took judicial, notice that the probate inventory and appraisal valued Mangold's estate at $90.000.

The Court denied appellant's petition to establish title and granted judgment in favor of the estate in the creditor's claim action. There was no request for written statement of decision, but from the bench the court stated it denied the petition because (1) the statute of fraud require contracts concerning real property to be in writing, (2) there was no evidence of a contract to make a will, and (3) in any case, there was no evidence of an enforceable agreement because there was no evidence that Mangold accepted appellant's offer to purchase the property under appellant's proposed conditions.

The court stated that it granted judgment in the creditor's claim action because there was no evidence that Mangold would have agreed that appellant was entitle to $20 per hour for his assistance, appellant did not prove he provided Mangold the number of hours of service he claimed to have provided, and he did nothing to enrich the estate.

Discussion

Appellant's brief is of no model of clarity. As we discern it, his fundamental contention is that he was entitle to a large share of Mangold's estate, and the trial court erred in refusing to award him any part thereof. We resolve this contentions by determining, given the theories on which the case was tried, whether there was substantial evidence to support the trial court's order in the probate proceeding (N0P035057) and judgement on the rejected claim (No. Loo8677). (See, North Coast Business Park v. Nielsen Construction Co. (1993) 17 Cal. App. 4th 22, 28-29; Browers v. Bernard (1984) 150 Cal. App. 3d. 870, 872-874.)

I

Even apart from the facts there was no writing to evidence an agreement between appellant and Mangold to transfer Mangold's real property to appellant, as is generally reuired by the statutes of frauds (Civ. Code, §§1091, 1624), there is substantial evidence by which the court could find there was no oral agreement to do so.

The essential elements of a contract are mutual assent and considerations (Chandler v. Roach (1957) 156 Cal, App. 2d. 435, 441.) Contracts may be established by direct evidence of inferred from the circumstantial evidence. (Fireman's Fund Indemnity Co. v. County of Sacramento (1960) 179 Cal. App. 2d. 319, 322.) When evidence is conflicting, or where reasonable conflicting inference may be drawn from the evidence which is not in conflict, a question of fact is presented for the trial court's decision, and its findings will be upheld is supported by substantial evidence. Its findings encompass ascertaining the credibility of witnesses. (Nestle v. City of Santa Monica (1972) 6 Cal. 3d. 920, 925.) Furthermore, under the conflicting evidence rule, the appellate court resolves all conflicts in favor of the judgment. (Broad of Administration v. Wilson (1997) 52 Cal. App. 4th 1109, 1127; Carom v. Andrew (1955) 133 Cal. App. 2d. 412, 416.)

The only evidence of the purported December 1994 agreement was appellant's testimony. Although his wife and daughter, with whom he lived, knew he was interested in purchasing the property and building a cottage for Mangold and knew he was assisting Mangold with daily livings needs, they did not know of any purchase agreement between them. Neither appellant nor Mangold

referred to such an agreement when the visiting social worker and public health nurse raised the question of Mangold's future housing arrangements. Neither of them mentioned it to Mangold's tenant or to his neighbor. No preliminary papers for such an agreement were ever drawn up, appellant made no monetary payments, and Mangold reassured his neighbor when she warned him not to sing anything that he had no plans for doing so.

From the evidence the trial court could reasonable conclude that even if appellant and Mangold may have discussed the sale of Mangold's property, Mangold did not assent to the material points of appellants' proposed purchase arrangement. (See Banner Enterprises, Inc. v. Superior Court (1998) 62 Cal. App. 4th 349, 358-359.) Absent of assent, there was no contract.

Insofar as appellant presented no testimony or other evidence to support his allegations of July 1995 oral promise by Mangold to devise his property to appellant by will, the court's findings that no such agreement existed is amply supported.

II

There was also sufficient evidence from which the trial court could reasonably reject appellant's claim for quantum meruit relief.

To establish entitlement to relief on a quantum meruti theory, the plaintiff must demonstrate that he performed services at the request of the defendant, and that defendant promised to pay for these services. (See, Evans Zeigler (1949) 91 Cal. App. 2d. 226, 230.) There was ample evidence from the various witnesses that appellant assisted Mangold from a sense of good citizenship and humanitarian concern. He himself testified that he did not expected to be paid for his aid, the public nurse observed his resentment when she implied he sought payment, and he specifically declined to social work's offer of payment.

The evidence that appellant did not expected remuneration for his

services to Mangold militates against quantum meruit relief.

Absent evidence of a promise and expectation of payment for services rendered, it was unnecessary to resolve any dispute about the number of hours appellant claimed to have worked.

III

There was also sufficient evidence from which the trial court could find appellant was not entitle to relief from the estate under a doctrine of unjust enrichment, the

essence of which is " that a person should no be allowed to enrich himself at the expense of another." Major-Brakeney Corp. v. Jones (1953) 121 Cal, App. 2d. 325, 339.) Generally, a person may not recover the value of un requested services under this doctrine absent some fault on the part of the defendant to make him liable for the value of the services. (1 Witkin, Summary of Cal. Law (9th Ed. 1987) Contracts, § 104, p. 131.)

As previously, the record supports a finding that appellant voluntarily assisted Mangold without expectation of payment. There was no evidence that the executors or beneficiaries [2] of the estate ever asked for his help. Furthermore, the only reasonable alternative to inferring that his assistance was wholly altruistic is inferred that it was done exclusively to further his own interest in obtaining Mangold's property after Mangold's death, which does not entitle him to contribution from the estate. (See, Major Blakeney Corp. v. Jenkins, supra, 121 Cal. App. 2d. at 340-341.) Finally, the court coult reasonably find that appellant's efforts did not benefit the state by enhancing the value of Mangold's property. Appellant

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[2] According to appellant's petition to establish title, and not denied in respondents thereto, Lillian Green, Justin Greene's mother, is the sole heir to Mangold's estate.

removed the trees and poultry he brought, and as photos taken by the county department of environmental management with in few day's of Mangold's death show, the property was, in the court's view, "still a mess."

IV

Appellant seems to content that the Greene breached various duties imposed on him

as executor, that the court relied on inadmissible hearsay evidence, and that failed to make certain factual findings. We do not address these contentions because appellant may not raise new fact-dependent issues for the first time on appeal (Estate of Westerman (1968) 68 Cal. 2d. 267, 279; he did not object to the evidence at trial (Evidence Code, § 353, subd. (a)); and he did not object request a statement of decision (Code of Civil Proc., § 632).

V

Appellant ask this court to take additional evidence and make findings of facts, under Code of Civil Procedure section 909, "on the grounds that what there is from which the testimony to defraud could be inferred is not substantial evidence." He does not specifically identify the evidence or the factual findings to be made. His "opening brief appendix" contain Social Worker Tracy's deposition testimony and what appears to be Public Heath Nurse

Jone's notes, and he refers to them in his brief. The apparent purpose of his request is to rebut any implication from the testimony of the witnesses or the trial court's oral decision that he attempted to defraud Mangold's estate. Insofar as the court's decision was no based on any fraudulent conduct by appellant, the evidence is irrelevant to the issues on appeal, and we deny his request.

VI

Respondent's seeks attorney fees as sanctions for having to defend a friviolous appeal. (Cal. Rules of Court, rule 26(a)(2).) The procedure for requesting such sanctions is by motion (rule 26(e)).

DISPOSITION

The order in case No. P035057 and the judgement in case No. L008677 are affirmed. The request for sanctions is denied.

HANING, J.

We Concur.

JONES, P.J.

STEVENS, J.

Estate of Mangold; Juan Bautista Rivera v. Justin L. Green
(A096190)

APPENDIX E

SOLANO COUNTY HEATH & SOCIAL SERVICES DEPARTMENT
PUBLIC HEALTHDIVISION

Coordinated Patient Care Program, Geriatric Assessment Form

Progress Notes (Continue) Page #7

Name Date Progress Note

10/14/94-10/19/94 From Mark Van Heerde, states that there was a man Juan Rivera, who came to clients home, stating he heard it was for sale. Took client to town shopping, stated he gets a phone, She questions his intentions. Inform client of Mr. Rivera whom is interested in purchasing the property .

Catherin Cherwing-Jordan,
Public Heath Nurse, Records.

IN THE SUPERIOR OF THE STATE OF CLAIFORNIA
IN AND FOR THE COUNTY OF SOLANO

IN THE MATTER OF THE
ESTATE OF ERNEST M. MANGOLD DECEASED.

Case. No. P03057

Deposition of

Richard Tracy
April 2, 1997

Reporter by: Vickey L. Benson, CSR No. 8076

The Witness: Richard Karl Tracy

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Q. Does the information contained in this letter come as a surprise to you ?
A. Let me read –
Q. Essentially, it indicates that Mr. Rivera arranged for further meals on Wheels for Mr. Mangold. Does it come as a surprise to you that Mr. Rivera arranged for this?
A. I wasn't aware that he did.

Page 44.

Q. Did you have an idea where Mr. Greene was, where he lived ?
A. Well, I met his wife.

Q. Where did you met his wife ?

A. At their residence a few miles from Mr. Mangold's.

Q. And what was the purpose of that meeting ?

A, We have been to Social Security Administration, to the bank, to the supermarket, and Mr. Mangold wanted to stop by to see Mrs. Greene.
Q. Okay. And what did he indicate wanting to do ?

Page 45

A. He said something about some papers that he had – left with Mr. Greene.
Page 56

Q. So between October 1994 and July 95 did you have any further conversation with Mr. Rivrea about his concern or your concern about Mr. Mangold's care ?

A. A don't have any specific recollection about it without any - -

Q. Other than this letter July 5, 1995, did Mr. Rivera ever get irritated about what he believed to be the nonaction on the part of the County to look after Mr. Mangod?

A. He never talked to me directly about it.

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Q. Did you respond to this letter of July 5th '95?

A. No I did not.

Q. Okay. Did you take any action on this letter?

A. It's not even addressed to me

Q. I realize that. You got cc'd, did you not?

A. I don't even think it's cc'd to me.

Q. Adult Protective Services?

A. Where?

Q. Down at the bottom of the page.

A. It does say Adult Protective Services.

(Discussion held of the Record.)

Q. You received a copy of it, correct?

A. Yes, I did.

Q. Okay.

A. It came trough our mail, if that' what you're asking?

Q. Right. So did you take any action whatsoever on it.

Q. What day did Mr. Mangold die, or go into the hospital?

A. July 18

Q. One week before his death, I was out to see Mr. Mangold with a lady to see, is she wanted to be his care provider.